

#### 4.043

### MCAO Jury Instruction Committee Version

#### No Justification for Provoking Another

If the defendant provoked the use or attempted use of physical force, self-defense is not available to that defendant unless two things happened:<sup>1</sup>

1. The defendant [withdrew from the encounter] [or] [clearly communicated to the other person an intent to withdraw, while reasonably believing it to be unsafe to withdraw]<sup>2</sup>; and
2. The other person continued or tried to use physical force against the defendant.

**Source:** A.R.S. § 13-404(B)(3)

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<sup>1</sup>Neither the prior self-defense instruction, 4.04, nor this instruction should be given unless there is evidence supporting these requirements. State v. Lujan, 136 Ariz. 102, 664 P.2d 646 (1983).

<sup>2</sup>"An essential element of self-defense is the accused's freedom from fault in provoking the difficulty that gives rise to the use of force." State v. Zamora, 140 Ariz. 338, 681 P.2d 921 (App. 1984).